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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 UNITED STATES OF AMERICA,

No. CR 09-1088 SI

7 Plaintiff,

8 v.

9 HARJIT BHAMBRA,

10 Defendant.
11 _____/

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14 INSTRUCTIONS TO JURY
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DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

CHARGE AGAINST DEFENDANT NOT
EVIDENCE—PRESUMPTION OF
INNOCENCE—BURDEN OF PROOF

The second superseding indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

DEFENDANT'S DECISION NOT TO TESTIFY

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the defendant did not testify.

REASONABLE DOUBT—DEFINED

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

WHAT IS EVIDENCE

The evidence from which you are to decide what the facts are consists of: (1) the sworn testimony of any witness; (2) the exhibits which have been received into evidence; and (3) any facts to which all the lawyers have stipulated.

WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Questions, statements, objections and arguments by lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what they have said in their opening statements, will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony and exhibits have been

received only for a limited purpose; where I have given a limiting instruction, you must follow it.

Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see, hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case, if any;
5. the witness's bias or prejudice, if any;
6. whether other evidence contradicted the witness's testimony;
7. the reasonableness of the witness's testimony in light of all the evidence; and
8. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

ACTIVITIES NOT CHARGED

You are here only to determine whether the defendant is guilty or not guilty of the charges in the indictment. The defendant is not on trial for any conduct or offense not charged in the indictment.

SEPARATE CONSIDERATION OF MULTIPLE COUNTS

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

STATEMENTS BY DEFENDANT

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT

You have heard evidence that the defendant committed other crimes not charged here. You may consider this evidence only for its bearing, if any, on the question of the defendant's intent, motive, opportunity, preparation, plan, knowledge, identity, absence of mistake, absence of accident and for no other purpose.

DEFENDANT'S PREVIOUS TRIAL

You have heard evidence that the defendant has been tried before. Keep in mind, however, that you must decide this case solely on the evidence presented to you in this trial.

WILLFULLY - DEFINED

Willfulness requires that an act be done knowingly and intentionally, not through ignorance, mistake or accident.

KNOWINGLY - DEFINED

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake or accident. You may consider evidence of the defendant's words, acts or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

FALSE STATEMENT RELATING TO NATURALIZATION OR CITIZENSHIP

(18 U.S.C. Section 1015(a))

Defendant is charged in Counts One and Two of the Second Superseding Indictment with making a false statement under oath relating to naturalization and citizenship in violation of Section 1015(a) of Title 18 of the United States Code. In order for the defendant to be found guilty of making a false statement under oath relating to naturalization and citizenship under Section 1015(a), the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant knowingly made a false statement in a case, proceeding or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship or registry of aliens;

Second, that the defendant made the statement under oath, orally or in writing; and

Third, that the statement was false, with all of you agreeing as to which statement was false. The government only needs to prove that *one* of the statements made by the defendant was false, and all of you must agree as to which statement was false.

FALSE STATEMENT OR REPRESENTATION TO A GOVERNMENT AGENCY

(18 U.S.C. Section 1001(a)(2))

The defendant is charged in Count Three of the Second Superseding Indictment with knowingly and willfully making a false statement or representation in a matter within the jurisdiction of a governmental agency or department in violation of Section 1001 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant made a false statement or representation in a matter within the jurisdiction of the executive branch of the government of the United States, specifically, the Department of Homeland Security;

Second, that the defendant acted willfully; that is, deliberately and with knowledge that the statement or representation was untrue; and

Third, that the statement or representation was material to the activities or decisions of the Department of Homeland Security; that is, that it had a natural tendency to influence, or was capable of influencing, the agency's decisions or activities.

UNLAWFUL PROCUREMENT OF CITIZENSHIP OR NATURALIZATION

(18 U.S.C. Section 1425(a))

The defendant is charged in Count Four of the Second Superseding Indictment with obtaining United States citizenship by fraud, in violation of Section 1425(a) of the Title 18 of the United States Code. In order for the defendant to be found guilty of this violation, the government must prove each of the following elements beyond a reasonable doubt:

First, that defendant obtained naturalization as a United States citizen; and

Second, that defendant knowingly made a material false statement or concealed a material fact as part of his application for naturalization, or during his interview for naturalization, with all of you agreeing as to the particular false statement or concealment.

DUTY TO DELIBERATE

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

CONSIDERATION OF EVIDENCE – CONDUCT OF JURY

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

1 Do not read, watch, or listen to any news or media accounts or commentary
2 about the case or anything to do with it; do not do any research, such as
3 consulting dictionaries, searching the Internet or using other reference materials;
4 and do not make any investigation or in any other way try to learn about the case
5 on your own.

6 The law requires these restrictions to ensure the parties have a fair trial based on the same evidence
7 that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the
8 fairness of these proceedings, and a mistrial could result that would require the entire trial process to
9 start over. If any juror is exposed to any outside information, please notify the court immediately.

12 USE OF NOTES

13 Some of you have taken notes during the trial. Whether or not you took notes, you should rely on
14 your own memory of what was said. Notes are only to assist your memory. You should not be overly
15 influenced by the notes.

17 JURY CONSIDERATION OF PUNISHMENT

18 The punishment provided by law for this crime is for the court to decide. You may not consider
19 punishment in deciding whether the government has proved its case against the defendant beyond a
20 reasonable doubt.

22 VERDICT FORM

23 A verdict form has been prepared for you. After you have reached unanimous agreement on a
24 verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the
25 Court that you are ready to return to the courtroom.

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.